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Letter dated 26 July 2002 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council

I have the honour to forward herewith a reply of the Rwandan Government to the report of Madam Carla del Ponte to the Security Council (see annex). The reply explains to the members of the Security Council the shortcomings of the International Tribunal for Rwanda namely, inefficiency, corruption, nepotism, lack of protection of witnesses, harassment of witnesses, employing *genocidaires* as members of defence teams and investigators, mismanagement, slow pace of trials, insufficient staff and lack of competent staff, negligence and false allegations concerning the Government of Rwanda. Finally it includes a conclusion and recommendations to the Security Council.

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(*Signed*) Anastase **Gasana**
Ambassador
Permanent Representative

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Annex to the letter dated 26 July 2002 from the Permanent Representative of Rwanda to the United Nations addressed to the President of the Security Council

Reply of the Government of Rwanda to the report of the Prosecutor of the International Criminal Tribunal for Rwanda to the Security Council

The report presented by the Prosecutor for International Criminal Tribunal for Rwanda to the Security Council on July 23, 2002 has come to the notice of the Government of Rwanda.

The Government of Rwanda acknowledges that the Tribunal is facing a crisis, a crisis of mismanagement, incompetence and corruption of its own making. The Government of Rwanda wishes to challenge the attempt by the Prosecutor to point to Rwanda as the cause of the crisis and not to the Tribunal itself.

In view of the false accusations and deliberate misrepresentations contained in the report, the Government of Rwanda is compelled to reply to the same as follows.

PART 1: RESPONSE TO THE SPECIFIC ALLEGATIONS OF THE PROSECUTOR.

1.1 ALLEGED INSTIGATION AND COERCION OF GENOCIDE SURVIVORS TO BOYCOTT THE ICTR.

The Prosecutor's report alleges that the Government of Rwanda is responsible for the unavailability of witnesses before the Tribunal.

The Government of Rwanda is aware that witnesses, the majority of whom are survivors of genocide, have for sometime boycotted the Tribunal. Their various grievances against the Tribunal include the slow pace of trials, the mistreatment of witnesses and the hiring of genocide suspects by the ICTR as personnel.

The Government of Rwanda considers these grievances against the ICTR legitimate and well founded. The Government of Rwanda and survivors of the genocide have raised these issues with officials of the Tribunal for over five years.

The Government of Rwanda regrets the insinuation that it has in some way instigated or coerced the genocide survivors to boycott the Tribunal. This is not only unfair but it is false. The Rwandan survivors of the genocide have since 1994 formed a number of organizations. These organizations are legal and practice independently with recognized elected leaders. These organizations function as any advocacy group would, championing the causes of their members in all ways permitted by law. As a matter of fact, the Government of Rwanda has itself frequently been a target of their criticism; when genocide suspects are acquitted or released due to their under age or old age, a terminal illness or when the Government proposed the Gacaca judicial process as an alternative to

trials before ordinary courts. The Government of Rwanda's response to the criticism has been to engage in a constructive dialogue.

Unlike the case in Yugoslavia, where the ICTY officials have engaged organizations representing witnesses, the ICTR's attitude towards genocide survivors can be described as arrogant and often times they have ignored them. Only recently have officials of the ICTR, including the Prosecutor, agreed to meet the leaders of these organizations to discuss their concerns.

The Prosecutor's argument that the Government and organizations representing genocide survivors are the one in the same has not been made in good faith. The Government of Rwanda forwarded the documents of these organizations to the ICTR to facilitate a dialogue between them and the ICTR. This facilitation was done pursuant to an express request of the Registrar during a meeting with the Registrar in March 2002 in Kigali.

In March 2002, the Government of Rwanda, represented by the Minister of Justice and the Tribunal, represented by the Registrar, reached an agreement to establish a joint commission to investigate and make recommendations on the alleged mistreatment of witnesses and the hiring of genocide suspects by the Tribunal. Unfortunately, the Registrar unilaterally withdrew the offer to set up the joint commission. The Government of Rwanda strongly contests the Prosecutor's claim that the joint commission was the Registrar's idea and the suggestion that the Government of Rwanda was somehow responsible for its abortion.

At the end of June 2002, both the Registrar and the Prosecutor of the ICTR visited Kigali and discussed with the responsible officials modalities for resolving the above-mentioned problems. The Registrar and the Prosecutor undertook to arrange without undue delay negotiations between the Government and the Tribunal to resolve outstanding issues. To date, neither the Registrar nor the Prosecutor has contacted the Government of Rwanda with regard to the proposed negotiations. Instead, the entire leadership of the Tribunal has proceeded to go on vacation before the crisis of unavailability of witnesses is addressed and resolved.

The allegation that the government of Rwanda is in any way responsible for the problem of witnesses who are unwilling to come to Arusha to testify is false.

1.2 FAILURE TO TRANSFER DETAINEES IN CUSTODY.

The allegation that the Government has not responded to the ICTR's request for the transfer of witnesses in custody is false. Recently, in the a particular case in which the Tribunal requested the transfer of detained witnesses, the Government replied in writing that the specific witnesses could not be transferred at the specified time they were required because they were expected to participate in the Gacaca courts which had just begun. The Government of Rwanda has made it clear, in person to the Prosecutor that these witnesses in custody could be made available at a subsequent date to be agreed upon mutually between the Government and the Office of the Prosecutor.

1.3 TRAVEL DOCUMENTS FOR ICTR WITNESSES.

Lately, the ICTR's campaign of misinformation has tried to lay blame for the failure of prosecution witnesses to attend hearings on alleged changes in requirements for the issue of travel documents. The Government of Rwanda wishes to set the record straight: No special requirements have been established for ICTR witnesses. Previously, ICTR witnesses were issued travel documents on the basis of a letter from the ICTR, which contained only the names of the witnesses and no other particulars. Today, ICTR witnesses are now required to produce the same documents that all other applicants for Rwanda travel documents are required to produce, namely:

1) a duly filled application form;
2) a photograph of the applicant;
3) a photocopy of the applicant's national identity card; and
4) a certificate by the Prosecutor that the applicant is not facing criminal charges in any court.

These requirements are entirely reasonable. A sovereign government cannot be expected to issue travel documents to persons whose identity has not been clearly established.

The Government has had frequent reports of deaths of witnesses in unexplained circumstances after their testimony at the ICTR. There have also been reports that ICTR personnel have secretly made out of court settlements with relatives of deceased witnesses after such deaths in order to cover the death of the witness[1]. The Government of Rwanda is gravely concerned that ICTR witnesses are being targeted. The new requirements are necessary to assist the authorities of Rwanda in ensuring the better treatment and protection of the witnesses before, during and after their testimony. The Government cannot ensure the protection of witnesses who have testified at Arusha without complete information on their identity.
The Government of Rwanda is prepared to discuss with the ICTR arrangements for the issue of travel documents acceptable to both parties.

1.4 FAILURE TO PROVIDE GOVERNMENT RECORDS.

The allegation that the Government of Rwanda has deliberately refused to provide information pertaining to government records is equally false. The Tribunal did indeed make a request for the information, but the request was made at very short notice. As everyone is aware, government buildings were looted or destroyed during the 1994 war and genocide. Many government records were destroyed or misplaced during this time. The government needs adequate time to go through available records to verify whether the information required by the Office of the Prosecutor is available. The allegation that the Government of Rwanda could be deliberately withholding information useful to the prosecution's case against any of the people whom the ICTR is trying is most absurd.

[1] An example is the recent death of a witness in the Kamuhanda Case.

1.5 ALLEGED FAILURE TO COOPERATE IN INVESTIGATIONS OF HUMAN RIGHTS VIOLATIONS BY THE RPA IN 1994.

International Criminal justice is intended to ensure that there is accountability in the absence of a state that is able and willing to bring perpetrators of human rights violations to justice. Rwanda has a functioning judicial system which is recognized by the statute of the ICTR. The national courts of Rwanda have already brought members of the RPA who committed abuses to justice and sentencing, which included capital punishment.

The Government of Rwanda does not believe that abuses committed by the RPA should be equated to the crimes committed by the perpetrators of genocide. The RPA stopped the genocide in Rwanda. It restored peace to the country. It is still defending Rwanda from the perpetrators of the genocide in the region. The Government of Rwanda believes that politically motivated pursuit of members of the RPA by the ICTR is not conducive to stability and national reconciliation in Rwanda.

The Prosecutor has confessed to the Government of Rwanda that she has to pursue indictments against the RPA because she is under pressure from some states to do so. It would appear that the proposed indictments of the RPA are merely intended to appease advocates of a so-called "ethnically balanced justice" and proponents of revisionism.

The Government of Rwanda strongly denies that it has any way interfered with the Prosecutor's investigations regarding alleged violations of Human rights by members of the RPA in 1994.

The Government of Rwanda has scrupulously respected the independence of the prosecutor of the ICTR and has not meddled in the investigations. The Prosecutor has maintained an office staffed with investigators in Rwanda since 1995. These investigators have included the so-called "special investigators team", responsible for investigating alleged violations by the RPA. The Government has issued these investigators with visas and residence permits. The members of the team have all along been known to the Government of Rwandan authorities. These investigators have had access to the entire country. They have been at liberty to undertake all investigations.

The Prosecutor has never brought to the attention of the Government of Rwanda any attempts to obstruct the work of these investigators. In these circumstances, the Government of Rwanda believes very strongly that it has fully discharged its obligations with regard to the requirements of the ICTR Statute's provisions relating to cooperation between the ICTR and States.

The ICTR has so far proved unable to handle the cases before it of persons indicted because of mismanagement and incompetence. The ICTR has yet to indict hundreds of perpetrators of genocide who are still at large across the world. The Prosecutor has scaled down the number of suspects still at large whom her office intends to indict from 250 to 130 for the remaining life of the Tribunal. In these circumstances it would be best

if the ICTR would concentrate on these cases and leave the cases of the RPA to national courts in the same way that suspected civilian perpetrators who are in custody in Rwanda have been left to national courts.

PART 2: THE FAILURES OF THE ICTR – EXTENT, CAUSES AND IMPLICATIONS

The Prosecutor's allegation that the Government of Rwanda has withdrawn cooperation from the ICTR is not only unjustified but equally unfair to Rwanda. The Government of Rwanda values the work of the Tribunal and as consistently demonstrated in its efforts to facilitate its work over the years. The ICTR owes even the modest of its success to large extent to the assistance it has received and continues to receive from the government and public at large in Rwanda. The Government of Rwanda reiterates its support for the ICTR.

However, the Government and the people of Rwanda in general have longstanding and grave misgivings on the performance of the ICTR. The ICTR is an enormous and expensive undertaking. It has an annual budget of around 100 million dollars and employs close to 1000 employees. The expectations by the people of Rwanda of the ICTR were very high upon its creation in 1994. Regrettably, the ICTR has had severe shortcomings from its inception. The Government of Rwanda has time and again drawn the attention of the successive Registrars and Prosecutors of the ICTR, as well as other officials of the United Nations, to the problems affecting the ICTR's operation. All efforts to redress the ICTR's evident shortcomings have to date been in vain. If the ICTR is to remain relevant to the people of Rwanda and achieve the goals for which it was established, it is imperative, the Government of Rwanda believes, for the United Nations Security Counsel to take urgent and far reaching remedial measures in the following areas of concern:

2.1 SLOW PACE OF TRIALS

The ICTR has been in existence for almost eight years.[2] The International Criminal Tribunal for Rwanda (ICTR) has to date handed down verdicts on only nine (9) individuals, three (3) of whom pleaded guilty. In effect, the ICTR has only conducted and concluded five (5) full trials since its establishment. These five (5) trials are the results the ICTR produced in eight years of operation with accumulated expenses of more than 800 million dollars. Many of the suspects such as Bagosora, Nsengiyumva and Kabirigi who are architects of the genocide have been awaiting trial for five or six years. There is concern that these suspects could be released on grounds that their right to trial without undue delay has been violated[3].

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[2] Established by Security Council Resolution No. 995 of 8 November 1994.

[3] Article 14(3)(c) of the ICCPR , Article 19(1) of the Statute.

The slow pace of ICTR trials has adversely affected the perception of the Tribunal both inside and outside Rwanda. These delays have also eroded the faith of many Rwandans in the will and commitment of the international community to deliver justice with respect to crimes committed during 1994.

The speed at which the ICTR operates is totally unacceptable, given the financial and human resources at its disposal.

2.2 FAILURE TO INDICT AND APPREHEND GENOCIDE SUSPECTS STILL AT LARGE

Thousands of government and military leaders were involved in planning and leading the genocide. At the end of the genocide in 1994, the planners and chief executors, both civilian and military, went to exile. The ICTR has to date indicted only around seventy (70) individuals for a genocide in which more than a million lives perished. Of those indicted, only 45 suspects have been arrested,[4] in spite of the fact that the Tribunal knows the countries in which the rest have sought to run. They include thirteen (13) indicted suspects who are waging war against Rwanda from bases in the Democratic Republic of Congo. The Prosecutor is under pressure to scale indictments so that the ICTR can conclude its work over the next couple of years. The Government of Rwanda condemns attempts to scale down investigations and indictments while the vast majority of the ringleaders of the genocide are still at large and may escape justice if the ICTR fails to bring them to justice.

2.3 MISMANAGEMENT

The principal reason why the ICTR failed to satisfactorily fulfill its mandate is mismanagement. This mismanagement has time and again been acknowledged by the United Nations[5].

Despite a budget for recruiting many essential employees, the ICTR has simply failed to hire the staff. The hiring process is often corrupted and based on nepotism and not merit. As a result, the ICTR is hiring an incredibly high number of incompetent people. This is a problem acknowledged by many within the ICTR. The Prosecutor in May 2001 dismissed seven senior attorneys, citing "professional incompetence".

Reports of crippling internal wrangles and feuds abound in all departments of the ICTR. Even efforts to find a solution to the latest problem of witnesses have floundered because the Registrar and the Prosecutor cannot agree on how a dialogue between the ICTR, the Government of Rwanda and survivors should proceed.

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[4] Amnesty international report on the ICTR: Achievements and Shortcomings

[5] See reports of Office of Internal Oversight Services.

2.4 HIRING OF PREPETRATORS OF GENOCIDE AS MEMBERS OF DEFENSE TEAMS

The Tribunal has hired and continues to hire perpetrators of genocide. As a result, the tribunal has had to indict and apprehend two of its own employees on charges of genocide and crimes against humanity. They both had served the ICTR for more than three years. Three others were dismissed after it had been established that they were key suspects of genocide and crimes against humanity. Tanzanian authorities have so far arrested two ICTR employees for carrying false identification. By the Registrar's admission, about ten other employees have since the indictment of their colleagues abandoned their jobs at the ICTR and fled because they carried false identities and they were implicated in the genocide and crimes against humanity.

2.5 TREATMENT AND PROTECTION OF WTINESSES

The ICTR has been criticized for its treatment of witnesses and failure to put in place a mechanism for protecting witnesses before, during and after their testimony. In Rwanda, ICTR investigators expose witnesses to danger by visiting them in marked cars. It has proved impossible to withhold the identity of the witnesses while at the Tribunal, especially when the defense teams, with access, are staffed with perpetrators of the genocide. The ICTR cannot appropriately protect its witnesses against this environment, which has a large presence of criminal suspects in its ranks.

Witnesses have long complained of mistreatment while in the care of the ICTR. According to a report by Amnesty International, the Victims and Witnesses Unit does not have any personnel with expertise and experience in the protection of witnesses at a national level[6]. The recent United Nations OIOS report states that the most critical deficiency in the Unit is the lack of staff with experience in witness protection in criminal trials and that "in the absence of qualified staff the ability to provide basic protection will not be available to important prosecution and defense witnesses."

The Unit has not extended any support to the knowledge of the Government of Rwanda to the victims. While the ICTR spends millions of dollars to meet medical care costs of its employees and detainees in custody, including HIV positive accused persons of whom some are charged with rape; victims who have been witnesses before the Tribunal are dying in large numbers due to the lack of medical care. The indifference of the ICTR and the United Nations to this fact is a contributing factor to the disaffection of victims towards the whole phenomenon of international justice irrespective of whether this grave mischief is a result of poor management, an indifferent mandate or improper prioritization.

The Unit of Witness and Victim Support is wholly composed of a non-Rwandan Management team. The Government of Rwanda does not believe that protection is possible in circumstances where victims feel insecure in the hands of those who are

[6] Amnesty international's report on the ICTR: Trial and Tribulations.

supposed to protect them. A conducive atmosphere in which witnesses can freely communicate with the officers in charge of their protection is necessary for witness protection. It is not proper that Rwandans in this Unit are translators, babysitters and cleaners.

Although there are reported deaths and alleged assassination attempts of former ICTR witnesses, the ICTR has not demonstrated any seriousness in attempting to improve its policy of witness protection. It has persistently rebuffed efforts of the Government to discuss appropriate witness protection and has refused to give details of the witnesses to the Government on the grounds that this endangers their security. There are reports that the ICTR personnel may be paying off relatives of witnesses who are killed to keep them silent. The Government of Rwanda is offended by these practices and insists that it must be fully involved in matters relating to protection of these witnesses, particularly after they return to Rwanda.

Witnesses have been subjected to reckless questioning to the extent of fainting in court. Judges have humiliated victims of rape in court while the witnesses recounted their ordeal. One judge in particular, has made sexist remarks during hearings and has made offensive statements to the effect that the number of victims of the genocide in 1994 has been grossly exaggerated.

Witness protection and assistance is one of the most crucial aspects of the Tribunal's functions and unless it functions effectively, the lives of witnesses will continue to be put at risk and the ICTR will be deprived of useful witness testimony which may be with held by witnesses unwilling to put their lives in danger. The facts that witnesses who as a result of rape are dying in large numbers is well known to the ICTR. Unfortunately, no policy has been put in place to address this fundamental problem and is directly linked to its mandate The ICTR has been treating its witnesses as disposable materials whose value end after their testimony.

2.6 CORRUPTION AND OTHER ABUSES

In March 2001 the UN Office of Internal Oversight Services pointed to a number of abuses, foremost among them a fee-splitting arrangement between defense lawyers and their clients. ICTR defense lawyers receive between US$80 and US$110 per hour in legal fees, and can claim up to 175 hours per month. There are now reports of fee splitting between investigators and suspects. The report, issued in February 2001, says the legal system at the ICTR continues to be abused; that almost all suspects rely on legal aid funds from the Tribunal to pay for their defense, claiming they are indigent. The report by the OIOS says some detainees at the ICTR solicit between US $2,500 to $5,000 per month from their defense teams. The report says that these detainees make such fee splitting arrangements a condition for any lawyer interested in being chosen for their defense team. These reports reveal the role of defense lawyers and ICTR employees in their capacity as accomplices and parties to corruption.

Defense lawyers, investigators and employees of the ICTR have swindled a lot of money from the ICTR through over billing. Suspects have their sons and other immediate relatives as members of their defense teams. In a situation whereby the ICTR spends a huge sum of resources to facilitate travel of witnesses, accused persons in Arusha have made use of these gaps to bring their entire family members as their witnesses. Others bring known suspects on the run and following their testimonies they are facilitated to go back to their hiding place.

Most Rwandans are incensed and extremely disappointed by the fact that resources intended to help bring to justice those responsible for the genocide are instead benefiting the criminal suspects and families There are even reports that some of these funds are ending up in the hands of terrorist groups based in the DRC. These illegal proceeds have afforded access to the best schools to children of perpetrators of genocide and crimes against humanity while the orphans in Rwanda can barely have their basic needs met. Although two lawyers have been sacked for this, none of ICTR employees has been held accountable. The ICTR is promoting impunity within its ranks, by maintaining in employ officers implicated in corruption.

2.7 GENERAL NEGLECT OF ISSUES OF JUSTICE OF INTEREST TO RWANDA.

The Government of Rwanda is appalled by the general indifference and lack of concern both within and outside the ICTR, towards the issues related to the Rwandan genocide. The Prosecutor for the ICTR is the same as for ICTY. The people of Rwanda find it extremely difficult to understand why the genocide of Rwanda, which claimed more than a million people, does not merit a separate Prosecutor and remains one person's part time job, in spite of the problems this has caused. The work involved in co-coordinating the investigation and prosecution of genocide and war crimes in Rwanda and the former Yugoslavia is enormous. The fact that the prosecutor has to oversee work in four different centers (The Hague, Arusha, Kigali and the former Yugoslavia) makes the challenge even more daunting. This is work that demands close attention and constant supervision. It requires a permanent presence in Rwanda and proximity to the current seat of the Tribunal. A single person can never effectively undertake such a task. The Office of the Chief Prosecutor should be split and an independent prosecutor be appointed to provide undivided attention to justice for the more than a million lives that were lost in the Rwanda genocide of 1994.

The ICTR Prosecutor is based at The Hague, where on a day today basis she deals only with ICTY issues and has no staff handling ICTR matters. At The Hague, the Prosecutor begins her working day with a meeting at 9 a.m. with senior officials to discuss matters relating to cases pending before the ICTY. The Prosecutor does not have any support staff or advisors at The Hague with whom she can discuss ICTR cases on day-to-day basis.

The Office of the Prosecutor of the ICTR is supposed to be based in Kigali, Rwanda but the Prosecutor visits Rwanda a few times a years for brief periods at a time.

With a Prosecutor who cannot supervise ICTR work on a day-to-day basis, the work of over-seeing ICTR should otherwise be the responsibility of the Deputy Prosecutor. It is difficult for Rwanda to understand how the United Nations system has allowed this very critical post to remain vacant for more than 14 months.

Not only has the Deputy Prosecutor's office been vacant for more than a year, but also that of the Chief of Prosecutions has been vacant for more than two years. There are, as well, a number of other critical posts for trial attorneys and staff for which the ICTR has funds but has failed to recruit.

The United Nations OIOS report concedes that the location of the office of the Chief Prosecutor, her office in Rwanda, and the chambers in three separate places hinders efficiency. The location of the chambers outside Rwanda, in particular, has led to an unfortunate development whereby the Rwandese public knows very little about its work. By making so little effort to establish a good working relationship with the people of Rwanda, the ICTR has denied itself information and support vital to its work.

When the establishment of the ICTR was under consideration by the Security Council, Rwanda indicated at the time, that it would have preferred to have the court based in Rwanda. Although the court was based at Arusha, it was agreed that some trials would at least be held in Rwanda. Eight years after its establishment, the ICTR is still dragging its feet about holding trials in Rwanda.

The Prosecutor has, contrary to the decision of the Security Council, essentially moved even the Office of the Prosecutor, which was supposed to be based in Rwanda to Arusha, leaving only a skeletal presence in Rwanda. Prosecution attorneys at the appellate level of the ICTR are all based at The Hague. It should be noted clearly that although the ICTR and the ICTY share the same appeals Chamber, they do not share Prosecution Attorneys at this level. This arrangement does not meet any reasonable objective other than misuse of resources especially because appeals hearings are normally conducted in Arusha.

The United Nation detention facility in Arusha has become another political platform from which the ideology of genocide can be spread. Until last year, by the ICTR's admission, one of the detainees clandestinely operated a website from within the detention facility. Furthermore, at least one other detainee is still able to send threatening e-mail messages to witnesses and victims in Rwanda. Failure to put in place proper management of the Detention facility remains a matter of very grave concern.

PART 3: CONCLUSION

The ICTR is at a crossroads. Its credibility in Rwanda is at stake. The United Nations must address the problems the ICTR faces or risk having a tribunal whose legacy will bring shame rather than honor to those who have had the privilege of serving or managing it. In the light of the foregoing the Government of Rwanda recommends to the Security Council that:

a) The Security Council amend the Statute of the ICTR to create an Office of the Prosecutor of the ICTR separate and distinct from the Office of the Prosecutor of the ICTY.
b) All critical posts, which have been vacant for a long time, including the Deputy Prosecutor (if a separate Prosecutor is not appointed for the Rwanda Tribunal) be filled with immediate effect.
c) Appropriate mechanisms be put in place to check corruption, nepotism and the hiring of genocide suspects by the ICTR.
d) The Office of the Prosecutor, which has clandestinely been shifted from Kigali to Arusha, be returned to Kigali.
e) A plan be devised to transfer the ICTR to Rwanda and that pending such a transfer, some of the trials should be conducted in Rwanda.
f) Measures be taken to put in place mechanisms for the better treatment and protection of ICTR witnesses.
g) The ICTR undertake dialogue with the Government of Rwanda and genocide survivors with the view to finding a solution to the problems facing the Tribunal.
h) The Security Council requests the Secretary-General to establish a commission of inquiry to investigate matters raised by the Government of Rwanda in this response to the report by the Prosecutor of the ICTR to the Council.

26 July 2002